

REMARKS

Reconsideration and allowance of the present patent application based on the following remarks are respectfully requested.

By this Amendment, claim 9 has been cancelled without prejudice or disclaimer to the subject matter therein. Thus, after entry of this Amendment, claims 1-8 , 10-21 and 23-25 will remain pending in this application.

Applicant acknowledges receipt of the initialed PTO-1449 form.

Claim 9 was rejected under 35 U.S.C. 112, second paragraph, as being allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Without responding to the merit or substance of this rejection and, merely in order to expedite prosecution of this application, claim 9 has been cancelled without prejudice or disclaimer, thus rendering moot the rejection of this claim.

Claims 1-5, 8, 10, 11, 12, 14, 15, and 24 were rejected under 35 USC 103(a) as being allegedly unpatentable over Lee (US 5,930,610). Applicant hereby traverses this rejection.

Applicant respectfully submits that the cited portions of Lee fail to teach or render obvious a device manufacturing method comprising, *inter alia*, “providing a first layer of electromagnetic radiation sensitive material on said substrate; providing a second layer of electromagnetic radiation sensitive material on said first layer of radiation sensitive material, the first and second layers of electromagnetic radiation sensitive material having a same tonality, said second layer of radiation sensitive material being of a different material than said first layer of radiation sensitive material, said first layer of radiation sensitive material having a dose size of at least approximately 1.5 times the magnitude of a dose size of said second layer of radiation sensitive material”, as recited in claim 1.

The Office Action refers to Figure 1c of Lee as allegedly disclosing, teaching or suggesting the features of claim 1 and asserts that “it is clear that the first layer of radiation sensitive material (2) has a dose size which is greater than that of the dose size of the second layer of radiation sensitive material (3) since the exposed portion of the second layer of radiation sensitive material (3) is greater than the exposed portion of the first layer of radiation sensitive material (2) after a single exposure step (see figure 1c).” Applicant strenuously disagrees.

Nowhere do the cited portions of Lee remotely disclose, teach or suggest that the first PMMA layer 2 has a dose size of at least approximately 1.5 times the magnitude of a dose size of PMIPK layer 3. The Office Action’s reliance on Figure 1c of Lee as allegedly

teaching these features is improper. According to M.P.E.P. 2125, “[w]hen the reference does not disclose that the drawings are to scale and is silent as to dimensions, **arguments based on measurement of the drawing features are of little value.**” See *Hockerson-Halberstadt, Inc. v. Avia Group Int’l*, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000) (The disclosure gave no indication that the drawings were drawn to scale. “[I]t is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue.”), emphasis added. Here, nowhere do the cited portions of Lee disclose that the drawings are to scale. Thus, the cited portions of Lee cannot render obvious the features of claim 1.

The Office Action cites the decision of *In re Aller* and alleges that it would have been obvious to provide “a first layer of radiation sensitive material having a dose size of at least approximately 1.5 times the magnitude of a dose size of said second layer of radiation sensitive material.” Applicant strenuously disagrees.

MPEP § 2144.04 states: “[I]f the facts in a prior legal decision are sufficiently similar to those in an application under examination, the examiner may use the rationale used by the court.” With this said, the facts of *In re Aller* are not sufficiently similar to those in the instant application to permit the Examiner to rely on the rationale relied on by the court. The court determined in *In re Aller* that a claimed process which was performed at a temperature between 40°C and 80°C and an acid concentration between 25% and 70% was held to be *prima facie* obvious over a reference process which differed from the claims only in that the reference process was performed at a temperature of 100°C and an acid concentration of 10%. Clearly, the facts of *In re Aller* have nothing to do with those in the instant application. Equally important is the fact that **the cited portions of Lee do not disclose the general conditions of claim 1.** See *In re Aller* (“[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.” *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955), emphasis added). Specifically, **the cited portions of Lee do not remotely disclose, teach or suggest anything related to the relative dose size of the first layer 2 and the second layer 3.** Thus, the decision of *In re Aller* cannot be relied on by the Examiner to teach or render obvious the features of claim 1.

For at least these reasons, Applicant respectfully submits that the cited portions of Lee do not present a *prima facie* case of obviousness. Therefore, claim 1 is patentable over the cited portions of Lee.

Claims 3-5, 8, 10-12, 14-15, and 24 are submitted to be patentable based on their dependency from claim 1 and for the additional features as recited therein. For example, with respect to claim 2, the Office Action cites Figure 3D of Lee as showing that the first layer has a dose size which is greater than the dose size of the second layer. However, Lee does not provide a Figure 3D. Thus, the rejection is deemed moot with respect to claim 2.

Therefore, based on at least the above noted reasons, Applicant respectfully submits that a *prima facie* case of obviousness based on Lee has not been established. Thus, Applicant hereby submits that the 35 U.S.C. § 103(a) rejection based on Lee be withdrawn and the claims be allowed.

Claim 23 was rejected under 35 U.S.C. §103(a) as being unpatentable over Lee in view of U.S. Patent Application Publication No. 2004/0056304 to Ahmed *et al.* (hereinafter "Ahmed"). Claim 23 was also rejected under 35 U.S.C. §103(a) as being unpatentable over Lee in view of U.S. Patent Application Publication No. 2002/0034872 to Kazama *et al.* (hereinafter "Kazama"). Applicant traverses these rejections for at least the following reasons.

Claim 23 depends from claim 1 and is hereby submitted to be patentable based on its dependency and for the additional features as recited therein. As discussed above, the cited portions of Lee fail to disclose or render obvious the features of claim 1.

Claim 23 recites that the substrate comprises "GaAs, Si, GaN, InP, or SiGa." As noted on page 5, the cited portions of Lee fail to disclose the use of such materials for the substrate. Ahmed or Kazama is provided as fulfilling this limitation. However, Applicant hereby submits that there is no motivation to combine the cited portions of Lee with those of Ahmed or Kazama. For example, the cited portions of Ahmed and Kazama fail to disclose or suggest the formation of T-gates, or the use of a first layer and a second layer of electromagnetic radiation sensitive material as recited in the claims.

Further, Applicant submits that the cited portions of Ahmed and Kazama do not overcome the shortcomings of the cited portions of Lee. For example, the cited portions of Ahmed and Kazama were merely cited by the Office Action for their respective teachings regarding substrate materials. That is, even if the cited portions of Lee were to be combined with the cited portions of Ahmed or Kazama, which Applicant does not concede, the combination would fail to provide or suggest at least that the first and second layers of material have the same tonality and that the first layer has a dose size of at least approximately 1.5 times the magnitude of dose size of the second layer of material as recited in claim 1.

Therefore, Applicant respectfully submits that a *prima facie* case of obviousness has not been established and that the cited portions of Lee, Ahmed, Kazama, or any proper combination thereof, fail to disclose or render obvious each and every feature recited by claim 1. Thus, Applicant respectfully requests that the rejection of claim 23 under 35 U.S.C. § 103(a) over Lee in view of either Ahmed or Kazama should be withdrawn and the claim be allowed.

Applicant notes with appreciation that claims 20, 21 and 25 are allowed.

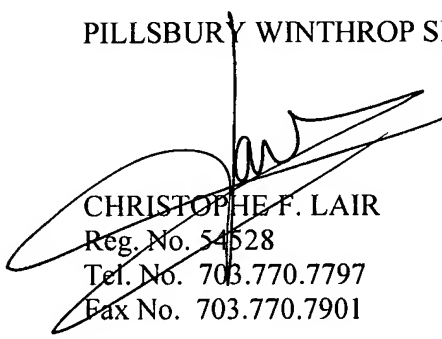
In the Office Action, claims 6, 7, 13, and 16-19 were objected to as being dependent upon a rejected base claim. Applicant acknowledges with appreciation the Examiner's indication that these claims would be allowable if rewritten in independent form. However, in view of the foregoing, Applicant respectfully submits that all of the pending claims are allowable.

All rejections and objections having been addressed, it is respectfully submitted that the present application is in a condition for allowance, and a Notice to that effect is earnestly solicited. If the Examiner has any questions or suggestions that would facilitate the prosecution of the present application, he is encouraged to contact the undersigned at the below-listed telephone number.

Please charge any fees associated with the submission of this paper to Deposit Account Number 033975. The Commissioner for Patents is also authorized to credit any over payments to the above-referenced Deposit Account.

Respectfully submitted,

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